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the Bushmen, where indeed, save among the Namib groups, it cannot be said to exist at all. [626] [171]

Personal disputes or grievances of a minor character were settled among the Cape Hottentots[1] by the two parties themselves, either in verbal argument or more often by means of a hand-to-hand fight. [627] No one took any heed of such quarrels except the women, who, in order to prevent their resulting in serious hurt or manslaughter, would intervene between the two men and ask them to stop. It was regarded [562] as a serious disgrace if the men ignored this request and still continued to fight.[2] In more serious cases the matter was referred to a court consisting of the "captain" and all the adult men of the kraal, [576] with the exception of those directly affected by the dispute. As soon as any complaint was made to the "captain", say about the disputed possession of cattle, he summoned all the men to a convenient open space outside the kraal, where they all sat round in a circle. The plaintiff and the defendant, together with their witnesses, were then given full hearing, each party conducting his own case. The councillors thoroughly examined the statements on both sides, and after discussion the decision was reached by the vote of the majority. The verdict was pronounced by the headman, and the party in whose favour it went obtained full possession of the disputed property. In cases of assault and bodily hurt the same procedure was followed, and damages awarded in cattle in proportion to the injury received. [695] Offences such as murder, manslaughter, treason, theft, incest, [674] adultery, and sodomy, regarded as crimes punishable by death, were also tried before this council. As soon as a man was known or [694] suspected of having committed such an offence, every member of the kraal considered it a duty to arrest him at the first opportunity, unless he succeeded in making his escape. Once captured he was safely held until the council assembled, which was always as soon as possible. The councillors sat in a circle, and the accused was placed in the centre, where he could hear all that was said and himself be heard by everybody around. The accuser then stated his case, and produced all his proofs, supported by witnesses. The prisoner, in return, offered all manner of defence the case would suggest, advancing any contradictory evidence at his command, and his answer

[1] Kolb, op. cit., 158-9, 161; cf. Peter[illegible], op. cit., 310.

[2] Some light perhaps is thrown upon this statement by the fact that among the Nharo, an exclusive council, [illegible] are generally the oldest men in any camp who have [illegible] other men or disobedience, or taking part. The similar term in the original does not [illegible] her husband.

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was listened to with undivided attention. The matter was then thoroughly discussed by the councillors, the verdict being arrived at by the decision of the majority. If the accused was acquitted, a few head of cattle from the herds of his accusers were adjudged to him as compensation. But if he was found guilty, and the headman, in whose hands the final sentence lay, pronounced in favour of death, the sentence was immediately executed. The headman, as chief executioner, rushed towards the criminal and felled him to the ground with a heavy blow of the kirri; all the other men then violently attacked him until he was beaten to death.[1]

No distinction was made in the execution of this sentence according to the status, wealth, age, or sex of the criminal; the headman himself, if found guilty of such a crime, would be dealt with in the same way. The body of the criminal, however, was buried with all the customary formalities observed in normal cases of death; his property was inherited as usual by his heirs, and no stigma attached to them as a result of his crime and his fate. There is good reason for supposing that this corporal punishment was not necessarily carried to extremes, but could be made more or less severe, according to the nature of the case and the decision of the council.

There was no appeal from the verdict of the kraal council, either in civil disputes or in crimes. The main tribal council, consisting of the chief and the kraal headmen, dealt only with disputes between different kraals. It was summoned by the chief on receipt of any complaint, and its proceedings were conducted along the same lines as those of the kraal councils.

The description given above can hardly be regarded as exhaustive or even as entirely trustworthy. Its interest lies mainly in the comparison it affords with the conduct of trials among the Namas, about whose legal usages we have more adequate information.[2] The local kraal councils can deal with civil disputes and minor offences, and impose corporal punishments or fines; but there is always an appeal from their judgments to the main tribal council, to which all cases of importance are also referred as a court of first instance. No special distinction is made in procedure between civil and criminal cases. The judges in all important trials are the elected councillors

[1] An eye-witness account of such an execution, in which four men were beaten to death, is quoted by Cooke-McGillewpie, op. cit., p. 172-3.

[2] The fullest accounts are given by Wandres, "Ueber Rechtsverhältnisse und Rechte der Hottentotten," 272-4; Vedder, "The Nama," 140-2; Rudolph, "Das Recht der Hottentotten," 331-7; cf. also Hahn, "Die Nama-Hottentotten," and J. Olpp, Nama and Damara, 101; Wandres, "Die Khoi-Khoin," 314-15; Report on the Natives of S.W.A., 73-4 passim.

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of the tribe. The eldest of them presides over the proceedings; 693
the others are his assessors, *ra-ange*, and can take part freely in the examination of the litigants or accused and of the witnesses. One of them also acts as public prosecutor, another as advocate for the defence (*gewaka-aoā*, interceder). The post of councillor, as we have seen, is honorary and carries no salary, but certain court fees are levied in trials. The complainant must deliver a couple of fat goats in advance in order to have his case heard, and these provide food for the judges as long as the court sits. The defendant also may be required to contribute a similar fee, even before the verdict is arrived at.

The initiative in any legal proceedings lies in the hands of the 694
complainant. Self-help is not permitted. He must lodge his grievance with the official known as the magistrate. The latter then summons the councillors, who assemble together on the day fixed for the hearing. The court meets as a rule out in the open, under the shade of some tree, where all squat in a circle. The litigants or accused and the witnesses are then summoned by the public messenger, who as sign of his function carries with him a long stick. With this, on entering the hut of the defendant, he knocks three times on the ground, without speaking a word. Then he goes away as silently as he came. The defendant now knows that his presence is required. If he refuses to appear, which in fact seldom happens, or fails to send an acceptable excuse in time, several strong men are sent to take and bring him by force. For defying the summons he then receives a special flogging. [681]
If he is accused of some crime, and is suspected of meditating flight, he is brought before the court with a rieme round his neck and his hands tied behind his back. Witnesses summoned are obliged to appear, and if they do not are fetched and punished in the same way as the defendant. The latter must stand or kneel in the centre of the court 695
circle, but if a woman is persisted to sit. The complainant stands or squats nearby till he is called upon to speak, and the summoned witnesses must also remain within a reasonable distance.

The magistrate now states the case to the council. The chairman then calls on the complainant to speak, next on the defendant and on all the witnesses one after the other. One witness as a rule is sufficient, but more are desirable. No hearsay evidence is allowed; only what the witness has himself seen and heard is admitted as valid. False testimony is severely condemned, the perjurer being punished [681]
according to the mischief he causes. Examination and cross-examination are conducted by the councillors. They rarely employ direct 695
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[i.e. a whole strip of cowhide. – Author]